

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3
4 UNITED STATES OF AMERICA
 Plaintiff

5 v.

6 MIGUEL GALAGARZA CRUZ
7 Defendant

CRIMINAL NO. 04-123(JAG)

8
9 **REPORT AND RECOMMENDATION**

10 On this date defendant appeared before the undersigned to plea guilty to Counts I and II of
11 the superseding indictment charging him with violating of 21 U.S.C. §841 and 18 U.S.C. §§ 924(c),
12 to wit, possession with intent to distribute cocaine, and possession of a firearm in furtherance of a
13 drug trafficking crime. Defendant was represented by attorney Jorge Díaz Reverón. The
14 government was represented by AUSA Timothy Henwood. The parties duly executed a consent
15 form permitting the undersigned to take defendant's plea, which is entered into pursuant to a plea
16 agreement reached with the Government, and which has been filed in Court.

17 Upon observing defendant throughout the proceeding, as well as listening to his answers to
18 the multiple questions posed by the Court, the undersigned finds him competent to enter a knowing
19 and voluntary plea. More so, defendant acknowledged he was not coerced nor intimidated into
20 entering the plea. Defendant was advised at the hearing of the minimum and maximum statutory
21 penalties and fines he faces. He was further advised that his plea is one pursuant to Fed. R. Crim.
22 P. 11(c)(1)(A) and (B). Accordingly, the sentencing Judge is not bound by the sentence
23 recommendation contained therein.¹ The undersigned also advised defendant of the constitutional
24 rights he waives by entering a guilty plea.

25 Upon inquiry by the Court, defendant accepted all the elements of the offense outlined in
26 Counts I and II of the superseding indictment and that he acted knowingly and intentionally during

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¹In this respect, the Court indicated that pursuant to the Supreme Court's recent pronouncements in *Booker* and *Fanfan* the federal Sentencing Guidelines are no longer mandatory upon the Court, however, must be considered as advisory.

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2 the commission of the offenses. He further accepted all the facts contained in the Government's
3 version of facts.

4 Defendant also accepted that aside from the conditions contained in the plea agreement, no
5 other promises, conditions or representations have been agreed to by the parties.

6 Defendant further conceded that should he receive the sentence proposed in the plea
7 agreement, he will waive his right to appeal. Likewise, by entering the present plea, he is
8 withdrawing his pending motion to suppress.

9 It is thus recommended by the undersigned that defendant's guilty plea be accepted, and
10 sentence be imposed upon him accordingly.

11 This report and recommendation is issued pursuant to 28 U.S.C. § 636 and Local Rule 72(d).

12 **SO RECOMMENDED.**

13 In San Juan, Puerto Rico, this 7th of April, 2005

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16 */s/ Gustavo A. Gelpi*

17 **GUSTAVO A. GELPI**
18 United States Magistrate-Judge
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